



## INTERIOR BOARD OF INDIAN APPEALS

Poo-sa'-key v. Portland Area Director, Bureau of Indian Affairs

25 IBIA 181 (02/16/1994)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

|                           |   |                         |
|---------------------------|---|-------------------------|
| POO-SA'-KEY,              | : | Order Dismissing Appeal |
| Appellant                 | : |                         |
|                           | : |                         |
| v.                        | : |                         |
|                           | : | Docket No. IBIA 94-15-A |
| PORTLAND AREA DIRECTOR,   | : |                         |
| BUREAU OF INDIAN AFFAIRS, | : |                         |
| Appellee                  | : | February 16, 1994       |

This is an appeal from a Finding of No Significant Impact (FONSI) issued under the National Environmental Policy Act, 42 U.S.C. § 4321 (1988). The FONSI was approved on September 20, 1993, by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), and concerned a proposed business lease of Coquille tribal land, and a \$4½ million direct loan, to the Coquille Economic Development Corporation, for the purpose of constructing and operating an assisted care living facility. Appellant was furnished with a copy of the FONSI on September 22, 1993. On September 28, 1993, she was formally advised of the procedures for appealing the FONSI to the Board.

Appellant's notice of appeal, received by the Board on October 18, 1993, stated in its entirety:

Re: Appeal of [FONSI] dated Sept. 20, 1993; Coquille Tribe,  
construction on Tupper Rock site in Bandon, Oregon

Default by the BIA Portland office in giving notice of same to people  
and groups that sent objections by FAX.

Hello,

According to [the Area Director], this is the official way to appeal  
the Fonsi issued on the above site. (see his letter attached). I want to:

- 1) file a formal objection to the FONSI
- 2) be notified if [the Area Director's] letter cited above is correct,
- 3) notify you that I am the only person, so far, that has gotten such  
instructions . . .

the published notice did not contain any instructions . . .

the published notice did not give the date the money and lease would be given . . .

I am still awaiting an answer to my question as to whether this notice was even legal.

4) I want a response from you as to what this lack of notice does for those who FAX'd objections, and the due dates given by [the Area Director] in the above cited letter.

5) I want to know if there is any further procedure or form to be used to file our full explanations, facts, and documents for what I assume will be a Hearing.

Thank you for your time.

The Board issued a pre-docketing notice on October 19, 1993, in which it requested that the Area Director submit the administrative record. Following receipt of the record, the Board issued a notice of docketing, setting out the parties' briefing privileges and advising appellant \that she bore the burden of proving error in the decision being appealed. See, e.g., D & K Farms v. Anadarko Area Director, 25 IBIA 157 (1994) (In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence).

In both the pre-docketing notice and the notice of docketing, the Board also stated:

Appellant is advised that she will be required to show, when she files her brief in this matter, that she has standing to pursue this appeal--that is, that she has a legal right to challenge the Area Director's decision.

Appellant indicates that she also seeks to appeal the failure of the Area Director to give notice of his decision and/or notice of appeal rights to other individuals and groups. Appellant is advised that it is unlikely that she will be found to have standing to raise the issue of the appeal rights of others. However, she may address the issue in her brief before the Board.

Appellant did not file an opening brief. Following expiration of appellant's briefing time, the Area Director moved to dismiss her appeal on the grounds that she had failed to show that she had standing. Appellant neither responded to the Area Director's motion nor filed a reply brief.

It is apparent that this appeal must be dismissed. Appellant has made no attempt whatsoever to demonstrate either that she has standing here or that the Area Director's decision is in error, even though she was specifically advised by the Board of both requirements.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

\_\_\_\_\_  
//original signed

Anita Vogt  
Administrative Judge

\_\_\_\_\_  
//original signed

Kathryn A. Lynn  
Chief Administrative Judge